

AMENDED AND RESTATED NON-FIRM ENERGY PURCHASE AGREEMENT

This AMENDED AND RESTATED NON-FIRM ENERGY PURCHASE AGREEMENT (together with the appendices, this "Agreement") is made and entered into as of _____, 2002, by and between the **California Department of Water Resources** acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System (the "Department"), an agency of the State of California, and the **County of Santa Cruz, California** (the "Seller").

WITNESSETH:

WHEREAS, the Department requires electric energy in connection with its responsibilities, as set forth in California Water Code Section 80000 et seq., with respect to the Department of Water Resources Electric Power Fund (the "Fund"), as established February 1, 2001, Assembly Bill 1, First Extraordinary Session (the "Act"); and

WHEREAS, the Department solicited bids for the purchase of energy; and

WHEREAS, the Department has determined to accept a bid of the Seller; and

WHEREAS, the Department and the Seller entered into a Non-Firm Energy Purchase Agreement, dated September 13, 2001 (the "Prior Agreement"); and

WHEREAS, in connection with the negotiation of the Prior Agreement the Seller had advised the Department that because of the administrative burden and delays associated with such requirements, Seller would not enter into the Prior Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements would apply to or be required to be incorporated in the Prior Agreement; and

WHEREAS, on the basis of the foregoing the Department determined prior to entering into the Prior Agreement that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions of the Government Code and the Public Contracts Code applicable to the Prior Agreement and further determined that such provisions and requirements should not be made applicable to or incorporated in the Prior Agreement; and

WHEREAS, the Parties have negotiated amendments to the provisions of the Prior Agreement and have agreed to include in the amendments thereto, among other things, the provisions of the Government Code and the Public Contracts Code applicable to state contracts; and

WHEREAS, the Department and the Seller wish to amend and restate the Prior Agreement; and

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

“Act” shall have the meaning given to it in the preamble to this Agreement.

“Authorized Representative” shall mean the person or persons designated in **Appendix A** to this Agreement as having full authority to act on behalf of a party for all purposes hereof.

“Availability Factor” means the percentage derived from the ratio of (1) amount of MWh of Non-Firm Energy delivered in a month to (2) the product of Contract Capacity and the difference between the total hours in the month, and the hours when the Generating Plant did not generate the Non-Firm Energy due to scheduled maintenance outages scheduled in accordance with Section 2.07 or failure by the Department to perform.

“Billing Address” means the billing address specified in **Appendix A** to this Agreement or as otherwise specified by the Department.

“Business Day” means any day other than a Saturday or Sunday or a holiday observed by Federal Reserve member banks in New York City.

“BVA LFG” shall mean Brown, Vence & Associates LFG Corporation, Inc.

“CAISO” shall mean the California Independent System Operator.

“CAISO Meter” shall mean the CAISO approved meter located at the Delivery Point.

“Commercial Operation Date” shall be the date on which the conditions set forth in Section 2.06 have been met. The Commercial Operation Date is expected to occur on or before July 1, 2003.

“Contract Capacity” shall mean 2MW if the initial Start-Up Test is performed in accordance with Section 2.06(e)(iii) and such Test has not been revised upwards in accordance

with Section 2.06(e)(iv) or 3MW, if the Start-Up Test has been performed in accordance with Section 2.06(e)(ii) or 2.06(e)(iv).

"Costs" shall have the meaning set forth in Section 6.03 hereof.

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" means the NP15, at the interconnection of the Generating Plant (on the high side of the transformer) with the CAISO-controlled transmission grid, as agreed in writing by the Seller and the Department.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Fund" means the Department of Water Resources Electric Power Fund as set forth in Water Code Section 80000 *et seq.* as established by February 1, 2001, Assembly Bill 1, First Extraordinary Session.

"Generating Plant" means the 3 MW (net) landfill gas fueled generating plant located at the Buena Vista Landfill, 1231 Buena Vista Drive, Watsonville, California.

"Invoice Month" means the calendar month after the delivery of Non-Firm Energy for which an invoice is being issued.

"Investment Grade" means a rating on an entity's senior long-term unsecured debt obligations of "Baa3" or higher from Moody's and "BBB-" or higher from S&P.

"Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

"Market Value" shall have the meaning set forth in Section 6.03 hereof.

"Monthly Guaranteed Availability Factor" means (i) Availability Factor of not less than seventy-five percent (75%) during a Peak Month, or (ii) Availability Factor of not less than seventy percent (70%) during a month that is not a Peak Month.

"Moody's" means Moody's Investor's Services, Inc., or its successor.

"NERC" shall mean the North American Electric Reliability Council or any successor organization.

"Non-Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Non-Firm Energy" means electrical energy produced, scheduled, flowed and delivered by the Seller from the Generating Plant to the Department, or its permitted assignees or designees under this Agreement, at the Delivery Point, measured in units of watt-hours or standard multiple thereof; 1,000Wh=1KWh, 1,000 KWh=1 MWh, etc. Production, schedule or delivery of the Non-Firm Energy may be prevented or interrupted for reasons of (i) scheduled maintenance outages or unscheduled maintenance outages, (ii) Uncontrollable Forces, or (iii) the Department's failure to perform its obligations hereunder. Non-Firm Energy is estimated to be delivered approximately 8,000 hours per year.

"Peak Months" or "Peak Month" means each or all, respectively, of the months of June, July, August, September and October.

"Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 6.03.

"Present Value Discount Rate" shall have the meaning set forth in Section 6.03 hereof.

"Prudent Electrical Practices" shall mean those practices, methods, and equipment procedures as changed from time to time, that are commonly used in prudent electrical engineering and operations to design and operate electric equipment and alternative energy facilities lawfully, safely, dependably, efficiently and economically giving due regard to the type of landfill gas fuelled facilities installed at the Generating Plant.

"Purchase Price" means \$65 per MWh of the scheduled Non-Firm Energy delivered by the Seller pursuant to this Agreement.

"Qualified Electric Corporation" means an electric corporation as defined by the Act, the long-term unsecured senior debt of which is rated Investment Grade.

"Reference Market-maker" means any marketer, trader or seller of or dealer in electric energy products whose long-term unsecured senior debt is rated Investment Grade.

"Replacement Agreement" means any agreement identical to this Agreement, excluding Section 2.04 and **Appendix B** to this Agreement, together with such additional changes as the Department and the Seller shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is an adequate consideration.

"Replacement Contract" means a contract having a term, transaction quantity, availability rate, delivery rate, Delivery Point and product configuration substantially similar to

the remaining Term, transaction quantity, delivery rate, Delivery Point and product configuration of this Agreement.

“Sale Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Non-Firm Energy not received by Department, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Non-Firm Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Non-Firm Energy to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Non-Firm Energy not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Department’s liability. For purposes of this definition, Seller shall be considered to have resold such Non-Firm Energy to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller makes an alternate sale of the Non-Firm Energy to a third party at the Delivery Point.

“Scheduling Coordinator” means an entity authorized to submit to the CAISO a balanced generation or demand schedule on behalf of one or more generators, and one or more end-users customers.

“S&P” means Standard & Poor’s Ratings Agencies (a division of McGraw-Hill, Inc.), or its successor.

“Start-Up Test” shall have the meaning set forth in Section 2.06(f) hereof.

“State” means the State of California.

“Term” shall have the meaning set forth in Section 2.05.

“Termination Payment” shall have the meaning set forth in Section 6.02 hereof.

“Uncontrollable Force” shall have the meaning set forth in Section 5.01 hereof.

ARTICLE II

PURCHASE AND SALE OF NON-FIRM ENERGY

Section 2.01. Purchase and Sale of Non-Firm Energy. (a) Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and receive, or cause to be purchased and received, the Non-Firm Energy at the Delivery Point, beginning on the

Commercial Operation Date and continuing for the Term and for which the Department shall pay the Seller the Purchase Price.

(b) Seller shall be obligated to schedule to the Department and to generate the Non-Firm Energy at the Generating Plant's maximum capability (but not higher than the Contract Capacity), unless restricted by the exercise of Prudent Electrical Practices. During the Term, the Seller shall not sell any electric energy or capacity from the Generating Plant to any party other than the Department, other than (i) any Non-Firm Energy in excess of the Contract Capacity, (ii) any Non-Firm Energy scheduled but not purchased by the Department due to the Department's failure to perform, or (iii) any increase in the output of the Generating Plant as to which the Department decides not to exercise its option to buy pursuant to Section 2.02(c). In no event may Seller curtail delivery for economic reasons.

(c) If the actual amount of MWh of the Non-Firm Energy delivered in any hour varies from the scheduled amount of MWh of the Non-Firm Energy, the Department shall pay the Seller the lesser of (i) the Purchase Price for the scheduled amount of Non-Firm Energy, or (ii) the Purchase Price for the actually delivered Non-Firm Energy plus the CAISO determined Incremental Imbalance Energy Price for any amount of negative imbalance energy. The Department shall not be obligated to purchase any amount of MW of the Non-Firm Energy from the Generating Plant in excess of the scheduled amount of MW of the Non-Firm Energy.

(d) The Seller shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy or its receipt at and from the Delivery Point.

(e) Upon Seller's reasonable notice, and pursuant to the terms of this Agreement, the Seller shall sell and deliver and Department shall purchase at the Purchase Price and receive any Non-Firm Energy produced by the Generating Plant prior to the Commercial Operation Date.

(f) In no event shall the Seller have the right to procure electric energy from sources other than the Generating Plant for sale and delivery pursuant to this Agreement, other than imbalance energy purchased from CAISO to cover any deviations between the scheduled Non-Firm Energy and actually delivered Non-Firm Energy.

(g) The Seller, or the Seller's Scheduling Coordinator, shall request that the Generating Plant's monthly electric revenue meter data be measured, recorded and delivered with the CAISO monthly invoice. The Seller shall deliver a copy of such monthly electric meter data to the Department with the invoice the Seller submits under Section 4.01 of this Agreement.

Section 2.02. Transmission and Scheduling. (a) The Seller shall arrange and be responsible for transmission service to the Delivery Point, and shall obtain, at Seller's expense, services of the Scheduling Coordinator necessary to deliver the Non-Firm Energy to the Delivery Point in accordance with CAISO requirements. Seller shall be responsible for all CAISO costs and charges, including imbalance charges due to deviations from scheduled deliveries. The Department shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with its transmission providers to receive the Non-Firm Energy at the Delivery Point. All deliveries shall be scheduled in accordance with CAISO requirements to fulfill contractual metering and interconnecting requirements set forth in the CAISO tariff and the implementing CAISO standards and requirements, including but not limited to, executing a standard form CAISO Participating Generator Agreement, so as to be able to deliver Non-Firm Energy to the Delivery Point, which is on the CAISO-controlled transmission grid. The Seller shall be responsible for ensuring that Non-Firm Energy deliveries are scheduled consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions shall be the responsibility of the Seller up to the Delivery Point. Risks of transmission curtailment or interruptions from the Delivery Point shall be the responsibility of the Department.

(b) No later than four (4) hours before Seller's Scheduling Coordinator is required to submit its preferred day-ahead energy schedule to CAISO, Seller shall deliver to the Department its preferred day-ahead schedule and, thereafter, Seller shall immediately deliver to the Department notice of any changes to such preferred day-ahead schedule and the reason(s) for it.

(c) Notwithstanding anything to the contrary herein, in the event Seller makes a same-day change to its schedule for any reason (other than an adjustment imposed by CAISO) which change results in an increase to its output, the Department shall have the right, but not the obligation, to take delivery of such Non-Firm Energy and to pay for such increase in output at the Purchase Price, which right must be exercised no later than one (1) hour prior to the deadline imposed upon the Seller's Scheduling Coordinator, for submitting hour-ahead schedules to CAISO, otherwise such right shall be deemed not to have been exercised and the Department shall have neither the right nor the obligation to take delivery of such Non-Firm Energy.

Section 2.03. Energy Production Forecasts. No later than the Commercial Operation Date, the Seller shall deliver to the Department its forecast of the amount of MWh of Non-Firm Energy it expects to deliver each day of the period commencing on the Commercial Operation Date and ending on the next succeeding April 30. No later than April 1 of each year during the term of this Agreement, Seller shall deliver to the Department its forecast of the amount of MWh of Non-Firm Energy it expects to deliver each day of the twelve (12) month period commencing on the next succeeding May 1 (adjusted for any remaining term of this Agreement of less than twelve (12) months). No later than the first day of each calendar month,

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the Seller shall deliver to the Department its forecast of the amount of MWh of Non-Firm Energy it expects to deliver each hour of each day of such calendar month. No later than noon on the Tuesday before each week commencing on the Sunday immediately succeeding such Tuesday at 12:00 P.M. midnight, Pacific time, and ending on the following Saturday at 11:59 P.M., Pacific time, the Seller shall deliver to the Department any update of its forecast of the amount of MWh of the Non-Firm Energy it expects to deliver to the Department for each hour of each day of such week.

Section 2.04. Sources of Payment; No Debt of State. The Department's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable from certain revenues of the Fund received from the Power Charges established and collected pursuant to the Rate Agreement entered into by the Department with the California Public Utilities Commission pursuant to Section 80110 of the Act on March 8, 2002. Any liability of the Department arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against the Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.05. Term. The Term of this Agreement shall commence on the Commercial Operation Date and end, regardless of any Uncontrollable Force events, on June 30, 2007, unless earlier terminated in accordance with the provisions of this Agreement.

Section 2.06. Construction Milestones. Commercial Operation Date. (a) The Seller represents that it has acquired all required land use permits and air permits necessary for a generating facility of 2MW.

(b) The Seller agrees to exercise its commercially reasonable efforts to achieve the following construction milestones by the following dates: (i) delivery at the Generating Plant of all required equipment – nine (9) months after execution of this Agreement, (ii) commencement of construction of the Generating Plant – ten (10) months after execution of this Agreement, (iii) completion of electric interconnection with CAISO – eleven (11) months after execution of this Agreement, (iv) availability of the Generating Plant for the Start-Up Test – eleven (11) months after execution of this Agreement, and (v) Commercial Operation Date – twelve (12) months after execution of this Agreement.

(c) Upon execution of this Agreement, the Seller shall supply monthly progress reports to the Department describing its progress towards completion of each milestone described in subsection (b) above. Commencing one week after the date the Seller fails, or has a reasonable reason to believe that it will fail, to complete one or more construction milestones by their respective deadlines, the Seller shall supply progress reports to the Department every two weeks with its revised milestone deadline list, the reasons for such revisions, and the description of the progress towards the revised deadlines and any efforts to mitigate any anticipated delays.

(d) The Commercial Operation Date shall be the date (A) upon which the Department (i) accepts in writing that the Seller has successfully completed the Start-Up Test in accordance with the procedure set forth in subsection (g) below (which acceptance can not be unreasonably withheld), or (ii) fails to reject the results of the Start-Up Test within the time specified in subsection (e)(ii) below, and (B) the Seller submits to the Department copies of the studies required by subsection (g) below, (C) the Seller has received from CAISO an approval of the electrical interconnection of the Generating Plant to the CAISO transmission grid, and (D) the Seller delivers to the Department the evidence of its Investment Grade credit rating.

(e) (i) The Seller shall provide the Department with ten (10) Business Days advance written notice of the date the Seller intends to conduct the Start-up Test, and provide representatives of the Department with access to the Generating Plant to monitor and observe the Test.

(ii) The Seller shall deliver the results of the Start-Up Test to the Department, by facsimile, and the Department shall review and respond to the results of the Start-Up Test within ten (10) Business Days of the date of delivery thereof and shall notify the Seller, by facsimile, of its acceptance of the results of such Start-Up Test.

(iii) Should the Department accept or fail to reject the results of the Start-Up Test within ten (10) Business Days of the delivery thereof, the results shall be deemed to have been accepted by the Department from the date of the delivery to the Department of the results of the Start-Up Test.

(iv) In the event that the Department rejects the results of the Start-Up Test, it shall deliver to the Seller, by facsimile, within such ten (10) day period, a written notice of such rejection stating with particularity all of its reasons for it.

(f) (i) A test ("Start-Up Test") shall be performed to demonstrate that the Generating Plant can operate in a reliable and sustained manner. In particular, the Start-Up Test shall demonstrate that the Generating Plant (x) achieved a net demonstrated capacity of not less than 2,850 kW (or 1,900 kW, if the Seller has not been able to obtain certain permits as provided

in Section 2.06(f)(iii) below) during a continuous four (4) hour period while burning the type(s) of fuel expected to be consumed by the Generating Plant during the Term; and (y) was in compliance with all applicable permits.

(ii) The Start-Up Test shall commence once the Generating Plant has reached stable operation at 2,850 kW (or 1,900 kW, if the Seller has not been able to obtain certain permits as provided in Section 2.06(f)(ii) below). The test shall be performed over a minimum continuous period of four (4) hours with data collected at 15-minute intervals. No data point shall be below 2,850 kW during the test period (or 1,900 kW, if the Seller has not been able to obtain certain permits as provided in Section 2.06(f)(iii) below). During the Start-Up Test, the Generating Plant shall be operated consistently with Prudent Electrical Practices and shall be in compliance with all applicable permit limits, regulatory and industry codes and standards. The Start-Up Test shall be run using all standard plant equipment and control systems in service without the benefit of temporary bypasses or manual controls that would not have been used in the day to day operation of the Generating Plant. Should the Start-Up Test be interrupted for any reason prior to the end of the 4-hour duration, the test shall be restarted.

(iii) Notwithstanding the foregoing, if the Seller has not been able to amend its permits to increase its generation capacity from 2MW to 3MW, the Start-Up Test shall be considered to be successfully completed if before the test the Seller informs the Department that it was unable to obtain the required permits, and, during such Start-Up Test, the Generating Plant is successfully operated in a reliable and sustained manner at 1,900 MW as provided in Section 2.06(f)(ii) above.

(iv) When the Seller obtains the permits allowing it to increase its generation capacity to 3MW, the Seller shall have the right to request a new Start-Up Test to show that the Generating Plant can operate in a reliable and sustained manner at 2,850 kW as provided in Section 2.06(f)(ii) above.

(g) On or before the Commercial Operation Date, the Seller shall submit to the Department a copy of the Generating Plant's System Impact Study ("SIS") and, if performed, Detailed Facility Study ("DFS") or Expedited Facilities Study ("EFS"), and the SIS and DFS or EFS demonstrate that the ability of the Generating Plant to operate during the contract hours will not be subject to extraordinary curtailment protocols utilized to manage flows over congested transmission lines or paths during normal system operating conditions (no lines, transformers, or critical generators out of service due to planned or forced outages) or critical system outage conditions (one critical generating unit out of service due to a planned or forced outage), or other

transmission-related protocols, schema or procedures that otherwise will significantly restrict Seller's capability to perform its obligations under this Agreement.

Section 2.07. Maintenance. (a) The Seller shall provide to the Department a list of scheduled maintenance outage periods by July 1 of each calendar year, but not later than six (6) months prior to the beginning of the proposed scheduled maintenance. The Seller may perform scheduled maintenance of the Generating Plant for up to 20 days in a 12-month period. The Seller has represented that its scheduled maintenance outages can be expected to be performed twice a year, before and after (but not during) the Peak Months. No scheduled maintenance outage shall occur during the Peak Months.

(b) In the event the Generating Plant, or portions thereof, must be shut down for an unscheduled maintenance, the Seller shall notify the Department as soon as practicable of the necessity of such outage, the time when such outage has occurred, or will occur, and its anticipated duration and extent. The Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance outages and to limit the duration and extent of any such shutdown.

(c) An operating procedures document which details the operating and maintenance procedures to be followed by the Generating Plant operators will be in place and available for inspection at the Seller's offices located at the Generating Plant, prior to delivery of the Non-Firm Energy to the Department.

(d) The Seller shall operate and maintain the Generating Plant in accordance with Prudent Electrical Practices.

(e) The Seller shall maintain the validity of permits necessary to operate the Generating Plant at the Contract Capacity during the Term.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) Pursuant to the Act, the Department is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Department of this Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction there over, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

(c) This Agreement constitutes the legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a political subdivision of the State, duly organized, validly existing and in good standing under the laws of the State, has the power and authority to own its property and assets, to carry on the governmental functions now being conducted by it and to execute, deliver and perform this Agreement.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Agreement constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of

governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights nor has any petition been presented or instituted for its winding-up or liquidation.

ARTICLE IV

PAYMENTS

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. Payments for amounts billed hereunder shall be made so that such payments are received by the Seller on or before the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made to the Seller, or its agent, to a bank account designated by the Seller in writing from time to time. Payment shall be considered received when the Department mails payment. If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03. Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with California Government Code Section 927.6(6) not to exceed fifteen percent (15%).

Section 4.04. Disputes of Invoices. Either the Department or Seller may, in good faith, dispute the correctness of any invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice was rendered. In the event an invoice or portion thereof is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute shall be in writing and shall state the basis for the dispute. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within five (5) Business Days of such resolution along with interest accrued at the rate provided in Section 4.03 from and including the due date to but excluding the date paid. Inadvertent

overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate provided in Section 4.03 from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.04 within twenty-four (24) months after the invoice is rendered.

Section 4.05. Records Retention and Audit. (a) Records Retention. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of three (3) years after final payment under this Agreement. Within three (3) years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Audit. Seller agrees that the Department, the Department of General Services, the Bureau of State Audits, or their designated representatives, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement at the Department's sole cost. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Agreement.

ARTICLE V

UNCONTROLLABLE FORCES

Section 5.01. Uncontrollable Forces. (a) Unless expressly provided in this Agreement, no party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force " means any cause beyond the control, and not the result of negligence, of the party affected, which cause the affected party by exercise of due diligence is unable to avoid and, when occurred, overcome, including, but not restricted to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and

action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority. The affected party shall take all reasonable steps to mitigate the effects of the Uncontrollable Force. No party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt written notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. Notwithstanding the foregoing, an Uncontrollable Force shall not include: (i) events arising from the failure by the Seller to operate and maintain the Generating Plant in accordance with Prudent Electrical Practices; (ii) an increase in the variable and fixed costs of operation and maintenance of the Generating Plant, unless the increase is caused by an Uncontrollable Force; or (iii) failure of third parties to provide goods or services essential to a party's performance, unless such failure is caused by an Uncontrollable Force; (iv) delays in or an inability of a Party to obtain financing.

(b) The Department shall not be relieved by operation of Section 5.01(a) of any liability to pay for Non-Firm Energy delivered to the Department by the Seller or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

(c) The Seller shall not be relieved by operation of Section 5.01(a) of any of Seller's payment liabilities under this Agreement including, without limitation, CAISO imbalance energy costs.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

(a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative. If the Seller is the Defaulting Party, the Department shall concurrently deliver a copy of such notice by overnight delivery to the Authorized Representative of BVA LFG. Failure to deliver a copy of the notice to BVA LFG shall not

impede the Department's right to terminate this Agreement as provided in the first sentence of this Section 6.01(a); or

(b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02 or to perform any other material covenant or obligation hereunder and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. If such failure cannot reasonably be cured within such five (5) Business Days period, the Defaulting Party shall be allowed additional six (6) months to cure the default so long as the Defaulting Party initiates and is diligently pursuing the cure within the five (5) Business Days period and continue to do so throughout the six (6) months cure period. The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or

(c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights, or a petition is presented or instituted for its winding-up or liquidation; or

(d) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party; or

(e) The failure by the Seller to maintain the Monthly Guaranteed Availability Factor for (i) more than three (3) consecutive months at any time during the Term, or (ii) for more than nine (9) months during any twenty-four (24) months period; or

(f) The failure by the Seller, regardless whether or not such failure is caused by an Uncontrollable Force, to achieve the Commercial Operation Date on or before December 31, 2003; or

(g) The failure by the Seller to resume the full performance of its obligations under this Agreement within six (6) months from the date of the total or partial suspension of the Seller's performance due to an Uncontrollable Force.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. The payment associated with termination ("Termination
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Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03. Subject to the provisions of Sections 6.02(b) and 6.02(c) hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

(c) Notwithstanding the forgoing, termination of this Agreement shall be the sole and exclusive remedy of the Non-Defaulting Party for Events of Default under Sections 6.01(f) and 6.01(g).

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case the Department is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case the Seller is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract (if any) based on the Per Unit Market Price, in each case using the Present Value Discount Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Discount Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches, as closely as possible, the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, any or all of the settlement prices of the

NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other bona fide third party offers; provided, however, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Agreement, transmission and ancillary service costs caused by the termination of this Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Agreement.

(e) In no event, however, shall a party's Market Value or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(f) The Non-Defaulting Party shall use reasonable efforts to mitigate the amount of the Termination Payment, including, to the extent practicable, the mitigation or elimination of the Costs.

(g) If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 8.01 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within one hundred eighty (180) Business Days of receipt of written notice subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 4.04, any amounts determined to have been overpaid.

ARTICLE VII

[RESERVED]

ARTICLE VIII

DISPUTE RESOLUTION

Section 8.01. Dispute Resolution. Both Parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise under this Agreement or from any dispute concerning Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis.

(a) This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response.

(b) If any dispute or claim arising under this Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 8.01, the Parties shall have all rights available under law or equity.

ARTICLE IX

REMEDIES FOR FAILURE TO RECEIVE

Section 9.01. Department Failure. If Department fails to schedule receipt and /or receive all or part of the Non-Firm Energy and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Department shall pay the Seller, within ten (10) Business Days of invoice receipt, an amount for deficiency equal to the positive difference, if any, obtained by subtracting the Sale Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE X
MISCELLANEOUS

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Non-Firm Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Non-Firm Energy shall pass from the Seller to the Department at the Delivery Point(s).

Section 10.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 10.04. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. The Purchase Price shall be deemed to include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Non-Firm Energy that arise

prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Non-Firm Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Non-Firm Energy.

Section 10.08. Transfer of Interest in Agreement. (a) Neither party shall assign this Agreement or its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, either party may, without the consent of the other party (and without relieving itself from liability hereunder, except as set forth in subsections (c) and (d)), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an affiliate of such party; (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the Generating Plant, whose creditworthiness is equal to or higher than that of such party; (iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act; or (v) transfer or assign this Agreement to any Qualified Electric Corporation pursuant to subsection (d) below; provided, however, that in each such case, any such transferee or assignee shall agree in writing to be bound by the provisions of this Agreement, and so long as the transferring party delivers such tax, enforceability and creditworthiness assurances as the non-transferring party may reasonably request.

(b) To the extent permitted by law and without prejudice to the rights of the Department under this Agreement, the Department agrees to cooperate with the Seller in executing such additional documents as may reasonably be required by the Seller to accomplish its financing objectives and requirements for the Generating Plant.

(c) Anything herein to the contrary notwithstanding, the Department may transfer and assign this Agreement to any entity created or designated by law for such purpose and the Department shall have no further obligations hereunder, provided, however, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the benefit of all persons selling power or energy to the Department, including the Seller. The Department may also pledge and assign the Agreement to a bond trustee as collateral for bonds issued by the Department.

(d) Anything herein to the contrary notwithstanding, the Seller may transfer and assign this Agreement to BVA LFG in result of which BVA LFG shall substitute the Seller in all rights and obligations hereunder, provided, however, that the Seller or BVA LFG delivers to the Department a notice of such substitution signed by both entities.

(e) At any time after January 1, 2003, the Seller shall, upon the written request of Department, enter into a Replacement Agreement with a Qualified Electric Corporation. This Agreement shall terminate upon execution of the Replacement Agreement. The execution of the Replacement Agreement shall constitute a novation, which shall relieve the Department of any liability or obligation arising after the date of termination of this Agreement. Seller's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the California Public Utilities Code with respect to such Replacement Agreement.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 10.11. No Dedication of the Generating Plant. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person. (b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 10.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. To the extent permitted by law, no party's directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in **Appendix A** to this Agreement.

Section 10.17. Waiver of Consequential Damages. To the extent permitted by law, in no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, neither party shall be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way a party's right to payment of the Termination Payment pursuant to Section 6.02 hereof.

Section 10.18. No Cross Defaults. This Agreement shall be treated as a stand-alone transaction and shall not be cross defaulted to any other transaction between the Department and the Seller, and no default under any transaction of the Department relating to the Department's Water Resources Development System shall be a default under this Agreement,

and no default by any party under this Agreement shall be a default under any transaction of the Department relating to the Department's Water Resources Development System.

Section 10.19. Standard Contract Provisions. The Standard Contract provisions attached as **Appendix B** to this Agreement shall apply to, and are hereby incorporated by reference into, this Agreement.

Section 10.20. Inspection Rights. During the construction period and the Term, upon written notice to Seller, the Department shall have the right to conduct on-site visits of the Generating Plant.

Section 10.21. Prior Agreement Amended and Restated. This Agreement amends and restates the Prior Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first above written.

CALIFORNIA DEPARTMENT OF WATER RESOURCES, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System

By: _____
Name:
Title

COUNTY OF SANTA CRUZ, CALIFORNIA

By: _____
Thomas L. Bolich
Director of Public Works

Approved as to form

By: _____
Santa Cruz County Counsel

APPENDIX A

Address

SELLER

Billing Address:

Santa Cruz County Department of Public Works
701 Ocean Street, Room 410
Santa Cruz, CA 95060
Attn: Patrick Mathews
Solid Waste and Recycling Services Manager

Notice Address:

Santa Cruz County Department of Public Works
701 Ocean Street, Room 410
Santa Cruz, CA 95060
Attn: Patrick Mathews
Solid Waste and Recycling Services Manager

Authorized Representative:

Thomas L. Bolich, Director of Public Works

BVA LFG

Notice Address for BVA LFG:

[TO COME]

Attn:

DEPARTMENT

Billing Address:

Department of Water Resources/CERS
Settlements Unit
Doreen Singh
3310 El Camino Avenue, Suite 120
Sacramento, CA 95821
(916) 574-0309 ph
(916) 574-1239 fax

Notice Address:

Department of Water Resources/CERS
3310 El Camino Avenue, Suite 120
Sacramento, CA 95821

Authorized Representative:

Attn: Executive Manager Power Systems
(916) 574-0339 ph
(916) 574-2152 fax

APPENDIX B

CCC800 CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of</i>

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement;
and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the Department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2) year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

DOING BUSINESS WITH THE STATE OF CALIFORNIA

Contractor agrees to comply with all applicable laws and all applicable orders and regulations of regulatory authorities having jurisdiction over matters covered by this Agreement. Without limiting the foregoing, Contractor shall comply with the following:

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former State employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.

2) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

Former State Employees (PCC 10411):

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1) For the two (2) year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.

2) For the twelve (12) month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12) month period prior to his or her leaving State service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State, acting through the Department, will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the State by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the State not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another State agency or other government entity.

9. APPROVAL: This Agreement is of no force or effect until signed by both parties. Contractor may not commence performance until Agreement is signed by Department.

10. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

11. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State, acting through the Department, in the form of a formal written amendment, except as set forth in Section 10.8 of the Agreement.

12. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for

a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

13. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

14. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

15. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in California Department of General Services Standard Form CCC800 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

16. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) “Public purchase” means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) “Public purchasing body” means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

17. CHILD SUPPORT COMPLIANCE ACT: “For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a) the Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

b) the Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”

18. IMPERMISSIBLE CONTRACTOR ACTIVITIES WITH REGARD TO UNION ACTIVITIES: The Contractor, by signing this Agreement, certifies that it is aware of its requirements under Government Code Sections 16645 – 16649 which, among other things, precludes certain activities and provides civil penalties with regard to assisting, promoting or deterring union organizing.